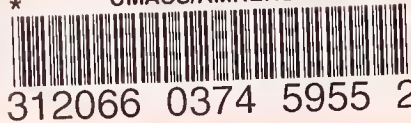


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Commonwealth of Massachusetts

**MASSACHUSETTS SENATE**

The Honorable William M. Bulger  
President of the Senate

**REPORT ON  
THE DECISION OF THE MASSACHUSETTS STATE LOTTERY  
TO OFFER "LOTTERY-BY-PHONE"**

(Senate 1480)

**A Report of the  
SENATE COMMITTEE ON POST AUDIT AND OVERSIGHT**

**Sen. Thomas C. Norton, Chairman**

**Sen. W. Paul White, Vice-Chairman**

**Sen. Linda J. Melconian**

**Sen. Robert A. Havern**

**Senator Robert D. Wetmore**

**Senator Christopher M. Lane**

**Senator Matthew J. Amorello**

**Prepared by the**

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**April 1992**

922/207





# *The Commonwealth of Massachusetts*

## SENATE COMMITTEE ON POST AUDIT AND OVERSIGHT

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## **EXECUTIVE SUMMARY**

In October 1990, the Massachusetts State Lottery entered into an agreement with National Interactive Systems, Inc, to sell lottery wagers via the telephone. The program, Lottery-By-Phone, was introduced to the public on November 22, 1991.

Various state legislators subsequently questioned the legality of telephone wagering in the Commonwealth, the legality of a 'ticket-less' Lottery game, and the Lottery-By-Phone vendor selection process.

On November 25, 1991, the Massachusetts State Senate directed the Senate Committee on Post Audit and Oversight to investigate the decision of the Massachusetts State Lottery Commission to permit the sale of lottery wagers by telephone and report their findings to the full Senate before December 31, 1992.

## **FINDINGS**

**FINDING: Lottery-By-Phone violates Massachusetts General Law Chapter 271, Section 17(A), the prohibition against telephone wagering within the Commonwealth.**

The Massachusetts State Lottery and the Massachusetts State Lottery Commission do not have the authority to exempt the general public or National Interactive Systems, Inc. from the provisions of Massachusetts General Law barring telephone wagering. That authority is shared by the Governor and the state Legislature. The Massachusetts State Lottery and the State Lottery Commission did not have, and still does not have, the authority to unilaterally implement Lottery-By-Phone.



**FINDING: The Massachusetts State Lottery Commission had no statutory authority to implement Lottery-By-Phone.**

The "ticket or share" requirement goes to the very heart and integrity of the lottery system. The physical ticket acts as a validating receipt, providing the player and the general public with assurance that all wagers are truly represented at the time of the drawing. This assurance is not provided by the computer printout that the Lottery computer generates. This printout does not constitute an authentic "ticket".

**FINDING: The Massachusetts State Lottery Commission violated Massachusetts General Law Chapter 10, Section 24 by implementing Lottery-By-Phone without notifying the Governor and the state Legislature that the program would require a change in the laws of the Commonwealth.**

The Lottery's statute charges the Lottery Commission with reporting,

"immediately to the Governor and the General Court any matters which require immediate changes in the laws of the commonwealth in order to prevent abuses and evasions of the lottery law or rules and regulations...."

Lottery-By-Phone represents a serious departure from established Lottery procedure and violates at least two Massachusetts General Law statutes. As of this writing, the Lottery Commission has not promulgated regulations for or voted to authorize Lottery-By-Phone. As of this writing, the Lottery Commission has not informed the Governor or the General Court that Lottery-By-Phone requires "immediate changes in the laws of the commonwealth."

**FINDING: The State Lottery Director had no lawful authority to license a special sales agent who did not provide tickets to the public prior to official lottery drawings. The Lottery Commission made no attempt to address this oversight.**

The State Lottery Director's authority is limited by statute. According to Massachusetts General Law, the Director,

"shall license as agents to sell Lottery tickets such persons as in his opinion will best serve the public convenience and promote the sale of tickets or shares, provided, however, that no person shall be assigned more than one license to sell lottery tickets or shares." (*emphasis added*)

Lottery-By-Phone does not provide a ticket or share as directed by Massachusetts General Law.

Perhaps the Commission's failure to ratify the Director's action through a formal vote lies in its recognition that it too lacks the authority to approve a scheme violating the statutory





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requirement to provide a physical ticket validating a player's wager.

**FINDING: The Lottery's failure to place Lottery-By-Phone out to bid and its failure to assess the impact of Lottery-By-Phone on Lottery revenues represent serious violations of the public trust.**

**-- Failure To Place Lottery-By-Phone Out To Bid.**

The State Lottery did not file a Lottery-By-Phone "request for information" or "request for proposals." The Lottery's failure to solicit bids denied the "special sales agent" opportunity to other interactive telecommunications businesses in the Commonwealth.

According to testimony submitted by National Interactive Systems, Inc., Lottery-By-Phone could provide "in excess of \$1 million per month to the Commonwealth Treasury." Therefore, National Interactive Systems, Inc. projected \$3 million in sales per month. *Based upon this testimony, Lottery-By-Phone was projected to provide National Interactive Systems, Inc. with \$1.5 million per month in commission monies, bonus payments, and service fees.*

The Lottery-By-Phone vendor selection process would have been better served had the Massachusetts State Lottery Commission solicited bids to ensure that: 1) the best service bureau in the Commonwealth was conducting the pilot program; 2) all service bureaus had received equal and fair treatment at the hands of the Lottery; and 3) that the process was open and free of any appearance of impropriety.

**-- Failure To Assess Impact Of Lottery-By-Phone On Lottery Revenue**

The Massachusetts State Lottery did not conduct any independent market research on the prospective effects of Lottery-By-Phone on the existing lottery portfolio.

The Massachusetts State Lottery has an obligation to protect the revenue it generates for the cities and towns of the Commonwealth. A market survey generated by the proponent of Lottery-By-Phone did not relieve the State Lottery of the responsibility to independently gauge the program's impact on the Lottery's image, operation, and effectiveness.

**FINDING: The Department of Public Utilities did not independently verify the authority of the Massachusetts State Lottery Commission to implement Lottery-By-Phone.**





The Massachusetts Department of Public Utilities (DPU) never independently verified that the Massachusetts State Lottery Commission had the authority to implement Lottery-By-Phone or that the program would be conducted in compliance with Massachusetts General Law.

The Department of Public Utilities assumed that AT&T, *"a large corporation with deep pockets,"* had clarified the legality of Lottery-By-Phone.

The Massachusetts Department of Public Utilities has an obligation to verify the legality of decisions concerning another state agency's authority. The Department had a threshold obligation to make its own determination that Lottery-By-Phone would be operated in compliance with Massachusetts General Law.

While it is customary to grant substantial deference to an interpretation of a statute by an agency charged with its administration, courts will not defer to an incorrect interpretation of that statute. Quasi-judicial agencies, such as the Department of Public Utilities, should act accordingly.

The Department's obligation to determine the Lottery's authority was especially important in this case because New England Telephone's stated corporate policy against participating in games of chance was strongly advanced as its initial defense against providing billing services to Lottery-By-Phone.

**FINDING: The Lottery had the opportunity to participate in the Department of Public Utilities hearing process regarding Lottery-By-Phone. It chose, however, through ex parte communication, to stress the importance of a summary hearing process rather than join the proceedings as an interested party.**

Treasurer Joseph D. Malone's Assistant Treasurer for Lottery Operations sent a letter to the DPU substantiating the relationship between the Lottery and National Interactive Systems, Inc., legitimizing the concept of Lottery-By-Phone, and suggesting that Lottery-By-Phone is an accepted, authorized venture of the Massachusetts State Lottery Commission.

In fact, the State Lottery Commission had never voted to approve Lottery-By-Phone. Barring Commission approval Treasurer Malone's appointee could not officially vouch for Lottery-By-Phone.



The DPU admitted uncertainty in the determination of whether or not Lottery-By-Phone constituted a product. They did not, however, involve the State Lottery in clarifying whether or not Lottery-By-Phone involved "the furnishing or delivery of a tangible object." Doing so would have placed the State Lottery in the uncomfortable position of potentially testifying against a program they had previously advocated.

**FINDING: The Massachusetts State Lottery Commission has held no public hearings or provided any public notice concerning Lottery-By-Phone thereby denying the public a voice in the decision-making process.**

The Massachusetts State Lottery Commission should have held a public meeting providing interested parties the opportunity to present data, views, or arguments in favor or against Lottery-By-Phone, approving the National Interactive Systems, Inc. special sales agent licensing agreement, and formally adopting Lottery-By-Phone.

This forum would have rendered moot justifiable criticism that the Lottery employed a "closed-door policy" in its decision-making process.

Lottery-By-Phone represents a potential threat to the overall sales of each of the 5,600 on-line agents in the state. A public hearing would have allowed input from the on-line lottery agents. The Lottery's indifference to the opinions of the small business sales agents was unwarranted and unfair.

The public hearing could have been used to define and explain the purpose and scope of the pilot program. For example:

- What will happen when the pilot program expires?
- If the program is prematurely terminated will National Interactive Systems, Inc. have any claim against the Commonwealth?
- Will on-line sales agents be extended the same benefits that Lottery-By-Phone is getting, (e.g. 24 hour access, ability to charge a service fee?)

**FINDING: The Massachusetts State Lottery Commission should undertake a study to ascertain, and then inform the Governor and the General Court, which legislation it believes has been rendered obsolete due to advances in technology or public policy goals. The Governor and the General Court should then work to address these issues.**



The Massachusetts State Lottery Commission was created twenty years ago. Since that time, technological advances have outpaced legislative review. To avoid future conflicts between technology, policy, and the law, the Massachusetts State Lottery Commission should review its operating statute and identify provisions that it believes must be amended, expanded, or repealed. The Commission should then so notify the General Court and the Governor.

### **RECOMMENDATION**

#### **RECOMMENDATION: The Massachusetts State Lottery Commission should shut down Lottery-By-Phone.**

Lottery-By-Phone is in current violation of Massachusetts General Law. The Massachusetts State Lottery Commission should notify National Interactive Systems, Inc. that its status as a special sales agent is inoperative and has been revoked. The Massachusetts State Lottery Commission should shut down Lottery-By-Phone.





## TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY .....</b>	<b>i</b>
<b>INTRODUCTION .....</b>	<b>1</b>
<b>PART I: BACKGROUND</b>	
<b>Lottery-By-Phone .....</b>	<b>2</b>
<b>Department of Public Utilities .....</b>	<b>3</b>
<b>Summary .....</b>	<b>5</b>
<b>PART II: ANALYSIS- MASSACHUSETTS STATE LOTTERY .....</b>	<b>6</b>
<b>Use of a Telephone .....</b>	<b>6</b>
<b>Lottery Tickets .....</b>	<b>7</b>
<b>Extension of Credit .....</b>	<b>7</b>
<b>Monoploy Control .....</b>	<b>7</b>
<b>Compensation for Expenses .....</b>	<b>8</b>
<b>Privacy and Confidentiality .....</b>	<b>9</b>
<b>Use of Social Security Number .....</b>	<b>10</b>
<b>PART III: FINDINGS AND RECOMMENDATION .....</b>	<b>11</b>
<b>PART IV: CONCLUSION .....</b>	<b>24</b>



## INTRODUCTION

In October 1990, the Massachusetts State Lottery entered into an agreement with National Interactive Systems, Inc., a subsidiary of CommNetics, Inc., a telecommunications service bureau, to sell lottery wagers via the telephone. The program, popularly known as Lottery-By-Phone, was introduced to the public on November 22, 1991.

In the days immediately following the Lottery-By-Phone announcement, various state legislators questioned the legality of telephone betting in the Commonwealth, the legality of a 'ticket-less' Lottery game, and the method of the Lottery-By-Phone vendor selection. Two legislators subsequently filed legislation aimed at prohibiting telephone lottery sales.<sup>1</sup>

On November 25, 1991, the Massachusetts State Senate "authorized and directed" the Senate Committee on Post Audit and Oversight to investigate the decision of the Massachusetts State Lottery Commission to permit the sale of lottery wagers by telephone. The Committee was charged with concluding its investigation before December 31, 1992.<sup>2</sup>

The Committee reviewed documents and interviewed representatives of the Massachusetts State Lottery, the Massachusetts Department of Public Utilities, the Massachusetts State Purchasing Agent, the Massachusetts Department of Revenue, the New England Telephone Company, the Information Industry Association, the Federal Office of Management and Budget, and the Subcommittee on Telecommunications and Finance of the United States House of Representatives' Committee on Energy and Commerce.

The Committee attempted on three separate occasions to speak or meet with representatives of National Interactive Systems, Inc. To date, National Interactive Systems, Inc. has not responded.

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<sup>1</sup>H-6352, An Act Further Regulating The State Lottery, filed by Sen. Walter J. Boverini (D-Lynn) and Rep. Edward J. Clancy, Jr. (D-Lynn).

<sup>2</sup>S. 1752, November 25, 1991, extended on January 15, 1992.





## PART I: BACKGROUND

### **LOTTERY-BY-PHONE**

Lottery-By-Phone is a program that combines interactive telecommunications with pay-per-call ("900 number") telephone service. Although other state governments have used interactive telecommunications for license renewals and information services, the technology has never before been applied to lottery sales.

Interactive telephone technology "allows users to select options from a menu of programmed choices in order to control the course of the session"<sup>3</sup> (just as many "auto attendant" telephone answering systems take a caller through a series of defined steps: "Press 1 for Department X, press 2 for Department Y," et cetera.) Pay-per-call, or 900 number telephone service is the reverse of toll-free, or 800 number service: the caller pays the cost of a 900 number call.

The Lottery-By-Phone concept was marketed to the Lottery as "a way to make more money with minimal cost and risk."<sup>4</sup> National Interactive Systems, Inc., a private corporation owned by businessmen with experience in interactive information response systems and applied physics, offered to design, implement, and fund a pilot program which would enable customers to play the Lottery over the telephone.

The State Lottery did not allocate any budgetary funds for Lottery-By-Phone, or undertake any independent analysis of the program to ascertain its viability.

National Interactive Systems, Inc. designed Lottery-By-Phone around the New England Telephone Company's billing service. Customers would dial a 900 number, place a wager with the Lottery-By-Phone computer, and pay for that wager via their next month's telephone bill.

Citing a corporate policy against participating in games of chance, New England Telephone denied billing services to National Interactive Systems, Inc. on three separate occasions.

National Interactive Systems, Inc. and AT&T (a long-distance carrier providing access between the various Massachusetts area codes), lodged a Verified Complaint with the Massachusetts

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<sup>3</sup>Audiotex Directory & Buyer's Guide, Fall/Winter 1990-91, ADBG Publishing, Los Angeles, CA, p. 176.

<sup>4</sup>Lottery-By-Phone proposal sent to Lottery Director, April 6, 1990, p. 2.



Department of Public Utilities, charging that New England Telephone had

"improperly failed and refused to provide billing and collection services to AT&T for a 900 service application ... in violation of New England Telephone's Tariff."<sup>5</sup>

National Interactive Systems, Inc. and AT&T sought

"judgement that New England Telephone is obligated to provide billing and collection services for Lottery-By-Phone and a directive to New England Telephone to provide such service."<sup>6</sup>

## DEPARTMENT OF PUBLIC UTILITIES

The Massachusetts Department of Public Utilities (DPU) "is responsible for the regulation of all common carriers that provide transmission of intelligence by electricity within the Commonwealth", and for "analyzing and reviewing all rate and tariff filings."<sup>7</sup>

On June 19, 1991, National Interactive Systems, Inc. and AT&T filed a Verified Complaint with the Department of Public Utilities against New England Telephone. In response, New England Telephone presented a number of positions defending its denial of service, including that Lottery-By-Phone was a "product" and therefore excluded from the New England Telephone tariff.<sup>8</sup>

A Verified Complaint can be resolved through an evidentiary hearing or through summary judgement. Summary judgement, the faster method of resolution, is allowed if no questions of fact are disputed by the parties involved. National Interactive Systems, Inc. and AT&T filed a Motion for Summary Judgement on June 19.

New England Telephone argued against Summary Judgement, stating, in part,

"the threshold issue to be decided is whether New England Telephone is required to provide billing and collection services for Lottery-By-Phone pursuant to the terms and conditions of New England Telephone's tariff. The Department of Public Utilities must make factual finding on whether Lottery-By-Phone is the delivery and/or provision of

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<sup>5</sup>Verified Complaint, D.P.U. Docket 91-140, p. 1.

<sup>6</sup>Paraphrased from Verified Complaint in D.P.U. docket 91-140, filed June 19, 1991.

<sup>7</sup>Department of Public Utilities Annual Report Fiscal Year 1987, p. 23.

<sup>8</sup>The other defense positions include 1) that no claim was stated upon which relief could be granted; 2) that LBP would adversely impact NET's image; 3) that billing and collecting the price of a lottery ticket is not a common carrier obligation; 4) that AT&T lacked standing to bring the complaint before the DPU.



a message, or a product like telegrams, flowers, gifts or wine."<sup>9</sup>

According to National Interactive Systems, Inc. and AT&T, Summary Judgement was appropriate.

"The issues raised in this Complaint are purely matters of legal interpretation of New England Telephone's tariffs and Department Orders..."<sup>10</sup>

"Lottery-By-Phone is clearly not the 'provision and/or delivery of telegrams, flowers, gifts, [or] wine...' The provision excuses New England Telephone only if Lottery-By-Phone falls within the category of 'other like services...' [This] turns on whether it is 'like' the delivery of telegrams, flowers, gifts, or wine.

"As a simple matter of tariff interpretation, 'like services' must also involve the post-call delivery of a tangible object."<sup>11</sup>

"Lottery-By-Phone is clearly different from the delivery of telegrams, flowers, gifts and wine."<sup>12</sup>

"Lottery-By-Phone does not involve the purchase, sale or delivery of any tangible physical product. To the contrary, Lottery-By-Phone is a classic information service. There is no merchandise to deliver, not even a Lottery ticket."<sup>13</sup>

In its decision the Department of Public Utilities found that,

"whether the language of New England Telephone's tariff concerning 'provision and/or delivery of telegrams, flowers, gifts, wine or other like services' is sufficient to make the tariffed billing services unavailable to Lottery-By-Phone ... the emphasis of the exclusionary language is on services that require the furnishing or delivery of a tangible object.

"It appears to the Department that the nature and operation of Lottery-By-Phone is sufficiently understood on the basis of the pleadings and affidavits in this proceeding to conclude that the Lottery-By-Phone service does not involve the provision or delivery of anything 'like' telegrams, flowers, gifts, or wine.

"According, we find that the language of this provision cannot be relied on to exempt

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<sup>9</sup>NET Statement Of Factual Issues, August 15, p. 3-4.

<sup>10</sup>Motion for Summary Judgement, DPU Docket 91-140, filed June 19, 1991, p. 2.

<sup>11</sup>Reply Memorandum of National Interactive Systems, Inc./CommNetics, Inc., and AT&T, September 17, 1991, p. 14, 16, and 18.

<sup>12</sup>Addendum in Response to NET Statement of Factual Issues, DPU Docket 91-140, filed August 21, 1991, p. 2-3.

<sup>13</sup>Memorandum in support of motion for summary judgement, August 21, 1991, p. 13.





New England Telephone from billing for Lottery-By-Phone.

"New England Telephone and Telegraph Company is hereby required to provide billing and collection services to AT&T and National Interactive Systems, Inc."<sup>14</sup>

#### SUMMARY

Lottery-By-Phone was presented as a risk-free pilot program by National Interactive Systems, Inc. As designed, the program was dependent upon the billing services of New England Telephone, an unwilling partner. The Massachusetts Department of Public Utilities ruled that New England Telephone had to provide billing services to Lottery-By-Phone.

The National Interactive Systems, Inc./New England Telephone tariff "challenge" would directly impact the State Lottery. The Department of Public Utilities did not, however, involve the Lottery in its decision making process. The Department did not ask that the Lottery clarify the role of a ticket in Lottery-By-Phone. The Department did not ask that the Lottery define its relationship with National Interactive Systems, Inc.

By failing to involve the State Lottery in the process the Department of Public Utilities not only accepted absolutely the authority of another state agency, but they accepted absolutely an interested party's second-hand description of that authority. The Department of Public Utilities did not allow for the fact that Lottery-By-Phone might have been beyond the scope of the authority of the Massachusetts State Lottery.

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<sup>14</sup>Order, DPU 91-140, p. 21 and 26.



## PART II: ANALYSIS - MASSACHUSETTS STATE LOTTERY

The Massachusetts State Lottery experimented with telephone lottery sales in 1976. Under this program players set up personal "lottery bank accounts." They placed wagers over the telephone which were subsequently withdrawn from their "lottery bank account" (accounts that could not be overdrawn). All calls were made via a recorded toll-free 800 number. Players received monthly account statements. The program remained in effect until 1981 when it was canceled due to the lack of consumer interest.

The State Lottery argued that Lottery-By-Phone was, in effect, a variant of their previous telephone sales program. An examination of the program, however, shows that Lottery-By-Phone represents a serious departure from the "traditional" on-line Lottery sales network and established Lottery practice, both past and present.

### **USE OF A TELEPHONE**

Lottery-By-Phone differs from the 1976-1981 telephone sales program in three basic ways: 1) it is run by a private corporation; 2) it extends credit to each bettor and; 3) it charges a service fee for each wager made on the system. The two programs share one important denominator - the explicit use of the telephone to place a wager.

Under Massachusetts General Law,

"whoever uses a telephone ... for the purpose of accepting wagers or bets ... or for placing all or any portion of a wager with another ... shall be punished by a fine of not more than two thousand dollars or by imprisonment for not more than one year."<sup>15</sup>

The State Lottery did not promulgate regulations for its first telephone sales program or for Lottery-By-Phone. The Lottery did not seek or receive legislative approval for either program.

The telephone wagering prohibition was enacted in 1958 and amended in 1962. It was not amended or repealed in 1971 when the Massachusetts State Lottery Commission was created by the state Legislature; it was not amended or repealed in 1976 when the Lottery conducted its first telephone-based sales program; it was not amended or repealed in 1991 when the Massachusetts State Lottery introduced Lottery-By-Phone.

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<sup>15</sup>M.G.L. Ch. 271, Sec. 17(A).





## LOTTERY TICKETS

On-line lottery bettors receive a ticket every time they make a wager. The ticket acts as a validating receipt when a player claims a prize.

The following message appears on the back of every Massachusetts State Lottery betting slip,

"Check your ticket! Be sure it represents desired bet(s) as it is your only proof of bet(s) placed. The Lottery suggests for (players) protection that (players) sign the back of the ticket to identify ownership."

Prizes are "awarded to the owners of tickets which contain the winning numbers as determined from the drawings ...."<sup>16</sup>

Lottery-By-Phone customers do not receive a ticket when they place a wager. They do not receive a receipt or any other tangible item verifying his or her basic wager. The "proof of purchase" is held by National Interactive Systems, Inc. Lottery-By-Phone, in effect, assumes the dual role of lottery agent and lottery ticket.

## EXTENSION OF CREDIT

On-line wagers are made on a "pay, then play" basis. Players pay for wagers when their betting slip is processed by the lottery agent. Lottery regulations stipulate that on-line bets be "paid for in full at the time the bet is wagered."<sup>17</sup>

Lottery-By-Phone customers do not pay for their wagers at the time that the bet is wagered. Lottery-By-Phone operates on a "play now, pay later" basis. Customers are billed for their Lottery-By-Phone wagers through their following months telephone bill. Although telephone bills are "payable upon receipt" Lottery-By-Phone customers are essentially extended a thirty day line of credit to play the Lottery, paying for April or May wagers in June and July.

## MONOPOLY CONTROL

Lottery-By-Phone holds a virtual monopoly on telephone lottery sales within the Commonwealth. This monopoly was written into the National Interactive Systems, Inc. licensing agreement,

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<sup>16</sup>961 CMR: State Lottery Commission 2.33 Determination of Prizes

<sup>17</sup>961 CMR: State Lottery Commission 2.52, 2.53, 2.54, 2.55.



"the Lottery agrees that during the Test Period it shall not license or authorize any other party to sell tickets through the use of either a 'common carrier 900' or an interactive telephone technology similar to the agents."

Customers have access to Lottery-By-Phone twenty four hours a day, seven days a week. Lottery-By-Phone does not compete with any other telephone vendor for sales commissions or bonus payments.

The Lottery-By-Phone monopoly runs counter to the "free market" philosophy that has governed the on-line network. There are approximately 5,500 lottery agents who lease on-line terminals across the Commonwealth. These agents compete with one another for sales, commissions, and bonus payments. Massachusetts has one of the highest ratios of lottery agents to residents (1:960) in the country (compared to the national average of 1:1,130). Consequently, each agent must work harder to attract the lottery players during regular business hours.

On-line agents cannot offer twenty-four hour a day access, the network is activated at 6:00 a.m. and goes off-line at 10:00 p.m.

#### COMPENSATION FOR EXPENSES

According to Massachusetts General Law, "no person shall sell a ticket or share at a price greater than that fixed by the Commission."<sup>18</sup>

On-line lottery agents are not permitted to add any charges or fees to cover "expenses and overhead" that they may incur as a result of offering lottery tickets to the public. While many stores must hire additional personnel to handle lottery sales, the stores cannot place a handling fee on top of the basic lottery ticket price to recoup these expenses.<sup>19</sup>

Lottery-By-Phone is exempted from this prohibition. Each Lottery-By-Phone wager costs \$1.75<sup>20</sup>. This price includes the basic \$1 lottery bet and a 75 cent fee which is divided among the telephone companies (for telecommunications costs) and National Interactive Systems, Inc.

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<sup>18</sup>M.G.L. Ch. 10, Sec. 29.

<sup>19</sup>Testimony of New England Convenience Stores Association before the Joint Committee on Government Regulations, December 16, 1991.

<sup>20</sup>The price was reduced from \$1.95.



for "the expenses and overhead attributable to the telephone-based marketing technology."<sup>21</sup>

## **PRIVACY AND CONFIDENTIALITY**

Wagers made on Lottery-By-Phone are not made in anonymity. All calls to Lottery-By-Phone are logged onto the Lottery-By-Phone database with the customer's social security number, telephone number, and (in the event of a cash prize claim) home address.

As a result of this technology, National Interactive Systems, Inc. compiles a detailed master-list of every Lottery-By-Phone customer. The licensing agreement between National interactive Systems, Inc. and the Lottery does not address whether or not this list can be used by National Interactive Systems, Inc. for non-lottery purposes.

A well developed database is a valuable asset. It is estimated that each 900 service caller is worth 75 cents.<sup>22</sup> The technology utilized by Lottery-By-Phone can,

- "create a mailing list from 900 Caller phone numbers,"
- "obtain name and address of callers through reverse appendage,"
- "learn the age, income, marital status, type of home and other precise marketing lifestyle indicators on every 900/976 customer."<sup>23</sup>

This information can be obtained without the customer's immediate knowledge. All they have to do is access a 900 number. The data is "captured" "within seconds."<sup>24</sup>

It has been reported that long distance telecommunications companies can also "identify the names and addresses of the nine closest neighbors of (an) original 900 caller. With this information, additional qualified prospects can be identified for database marketing efforts. A growing portion of 900 numbers exist to build the databases of current and potential customers who can later be hammered with sales pitches."<sup>25</sup>

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<sup>21</sup>Special Sales Agreement between Massachusetts State Lottery and National Interactive Systems, Inc. Section 2 (b) Price of Tickets.

<sup>22</sup>Audiotex Directory & Buyer's Guide, p. 99.

<sup>23</sup>IBID, p. 105 and 107.

<sup>24</sup>Audiotex, op. cit., p. 108.

<sup>25</sup>"Say Hello To 900", Nathan Cobb, The Boston Sunday Globe Magazine, May 26, 1991.





## USE OF SOCIAL SECURITY NUMBER

Lottery-By-Phone requires that customers input their social security number as a form of registration. The social security number acts as a Lottery-By-Phone "membership card." Players are restricted to two calls per day. This limit is enforced by tracking all calls against each caller's social security number.

The Lottery-By-Phone licensing agreement between the Lottery and National Interactive Systems, Inc. states,

"For identification purposes, National Interactive Systems, Inc. may require the caller to enter such caller's social security number or other such number as designated by National Interactive Systems, Inc."

It further states that prize claims over \$600 shall be made available,

"Only upon verification of appropriate information to the satisfaction of National Interactive Systems, Inc., which may include the winning Play validation number, and social security number or other number as may required to be provided by National Interactive Systems, Inc."

Section 7 of the Privacy Act of 1974 (5 U.S.C. 552(a)) states, in part,

"Any Federal, State or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it."<sup>26</sup>

According to the Federal Office of Management and Budget, which is responsible for developing guidelines on the Privacy Act of 1974, Lottery-By-Phone is not prohibited from asking for and then using a social security number as an account identifier. However, Lottery-By-Phone is prohibited from using that social security number for any future non-Lottery-By-Phone purpose unless it clearly states up front what uses will be made of it.

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<sup>26</sup>Interview with Acting Chief, Information Policy Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, Executive Office of the President, February 18, 1991.



### PART III: FINDINGS AND RECOMMENDATION

The Lottery-by-phone program introduces major policy changes and encroaches upon established Law.

We have developed nine major findings as a result of our review of the Lottery's decision to initiate and implement "Lottery-By-Phone," one finding directly applicable to the Massachusetts Department of Public Utilities and eight findings applicable to the Massachusetts State Lottery or the State Lottery Commission.

**FINDING: The Lottery had the opportunity to participate in the Department of Public Utilities hearing process regarding Lottery-By-Phone. It chose, however, through ex parte communication, to stress the importance of a summary hearing process rather than join the proceedings as an interested party.**

On June 18, 1991, one day before AT&T and National Interactive Systems, Inc./CommNetics, Inc. filed a Verified Complaint against New England Telephone through the Department of Public Utilities (DPU), Peter Mazareas, the Assistant Treasurer for Lottery Operations, sent the following letter to DPU Chairman Robert C. Yardley:

"As the Assistant Treasurer for Lottery Operations for the Commonwealth of Massachusetts, one of my major objectives is to help find ways to raise an additional \$75 million in revenues which will be sent to cities and towns in the form of local aid. For over a year, the Lottery and the (sic) National Interactive Systems/CommNetics, Inc. have been working together on a system which will allow Lottery plays to be made by phone. This system should increase Lottery receipts and, therefore, provide additional revenues to the state. Thus, we are eager to proceed with a one year pilot program to evaluate the concept.

"The dispute between AT&T and New England Telephone, now before the Department of Public Utilities, is preventing the testing of this new service. Because the Lottery has a substantial interest in having this service go forward quickly, we request that the Department of Public Utilities rule on the matter as expeditiously as possible."

In this letter, Mazareas appears to substantiate the relationship between the Lottery and National Interactive Systems, Inc., to legitimize the concept of Lottery-By-Phone, and suggests that Lottery-By-Phone is an accepted, authorized venture of the Massachusetts State Lottery Commission.

In fact, the State Lottery Commission had never voted to approve Lottery-By-Phone (see below). The Commission had never sanctioned the concept, the relationship with National Interactive Systems, Inc., or promulgated regulations defining the program. Barring Commission approval



Mazareas could not officially vouch for Lottery-By-Phone.

New England Telephone raised an issue of fact by questioning whether or not Lottery-By-Phone constituted a tangible product. New England Telephone stated that Lottery-By-Phone involved the sale of a product (i.e. a ticket) and was, therefore, not included in its existing tariff.

The DPU Hearing Officer admitted uncertainty in the determination of whether or not Lottery-By-Phone constituted a product:

"I am not sure whether Arthur Miller (Ed. note: legal expert) testifies about what's a product, but we don't normally try that kind of thing out here at the Department of Public Utilities."<sup>27</sup>

The Mazareas letter formally declared the interest of the State Treasurer's office and the State Lottery in Lottery-By-Phone. The DPU did not, however, involve the State Lottery in clarifying whether or not Lottery-By-Phone involved "the furnishing or delivery of a tangible object."<sup>28</sup>

Involving them in this issue would have placed the State Lottery in the uncomfortable position of potentially testifying against a program they had previously advocated. The State Lottery would have had to testify conclusively that Lottery-By-Phone either involved the transmission of a ticket ("a tangible object") or merely involved the transmission of information. The former testimony would have benefited New England Telephone and supported the argument that Lottery-By-Phone did not fall under the existing NET tariff. The latter testimony would have exposed the State Lottery to charges that they had sanctioned a game outside their statutory authority (see below).

**FINDING: The Department of Public Utilities did not independently verify the authority of the Massachusetts State Lottery Commission to implement Lottery-By-Phone.**

The Massachusetts Department of Public Utilities (DPU) never independently verified that National Interactive Systems, Inc. was authorized by the Massachusetts State Lottery

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<sup>27</sup>Transcript of Prehearing Conference, August 1, 1991, Fritz & Sheehan Associates, Inc, Boston, p. 12.

<sup>28</sup>Ibid.





Commission to offer Lottery-By-Phone to the general public.

The Department of Public Utilities did not request or receive confirmation of the Lottery's relationship with National Interactive Systems, Inc., or a copy of the licensing agreement designating National Interactive Systems, Inc. a special sales agent of the Lottery.<sup>29</sup>

The DPU did not ascertain that Lottery-By-Phone would be (or could be) conducted in conformity with Massachusetts General Law, or seek to ascertain that Lottery-By-Phone would be conducted in conformity with promulgated regulations. At no time did the DPU request a copy of the Lottery's promulgated regulations for Lottery-By-Phone.

At no time did the DPU seek confirmation from the Lottery or the Legislature that Lottery-By-Phone had been exempted from the Massachusetts General Law ban against telephone wagering.

A spokesperson for the Department of Public Utilities stated that they assumed that AT&T, "*a large corporation with deep pockets*," had sought clarification of the Lottery's authority to operate Lottery-By-Phone, and had verified the Lottery's relationship with National Interactive Systems, Inc. The spokesperson said that departmental staffing cuts and budgetary restrictions made independent research difficult, but that additional clarification by the Department of Public Utilities would have been superfluous.

As an arbiter of public policy the Massachusetts Department of Public Utilities has an obligation to verify the legality of decisions concerning another state agency's authority. The Department of Public Utilities should not have accepted the definition of the State Lottery's authority from an interested third party.

State agencies receive their authority from the state Legislature. Definitions of that authority should be verified either by the agency in question or by reference to the legislative history. The Department of Public Utilities should have sought a first-hand definition of the Lottery's statutory authority.

Even if the Department had the benefit of the Lottery Commission's participation at its

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<sup>29</sup>Interview with representatives of State Lottery, February 12, 1991.



hearing it still had a threshold obligation to make its own determination that Lottery-By-Phone would be operated in conformity with Massachusetts General Law. While it is customary to grant substantial deference to an interpretation of a statute by an agency charged with its administration, courts will not defer to an incorrect interpretation of that statute. Quasi-judicial agencies, such as the Department of Public Utilities, should act accordingly.

The Department's obligation to determine the Lottery's authority was especially important in this case because New England Telephone's stated corporate policy against participating in games of chance was strongly advanced as its initial defense against providing billing services to Lottery-By-Phone. The Department, however, made no effort to ascertain whether Lottery-By-Phone had been exempted from the Massachusetts General Law prohibition against telephone wagering.<sup>30</sup>

**FINDING: The Massachusetts State Lottery Commission had no statutory authority to implement Lottery-By-Phone.**

The Lottery statute speaks repeatedly to the issue of the "ticket or share." The Lottery's original enabling language provided that the Lottery Commission will undertake,

"such matters necessary or desirable for the efficient and economical operation and administration of the lottery for the convenience of the purchasers of tickets or shares and the holders of winning tickets or shares,"<sup>31</sup>

and stated that,

"each state lottery ticket or share **and each coupon or receipt thereof** shall have imprinted thereon the state seal and a serial number."<sup>32</sup>

At its outset the Lottery-By-Phone licensing agreement appears to conform with the "ticket or share" requirement. The agreement "appoints and licenses (National Interactive Systems, Inc.) as a Special Lottery Agent for the sale of Tickets."

Upon further examination, however, the agreement contradicts the accepted definition of a ticket as defined by Massachusetts General Law and Lottery regulations. The Lottery-By-

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<sup>30</sup>M.G.L. Ch. 271, Sec. 17(A).

<sup>31</sup>Ibid.

<sup>32</sup>Acts, 1971- Chapter 813, section 24.



Phone licensing agreement states that the Lottery will provide a computer print out of all Lottery-By-Phone bets placed for each day but provides no mechanism providing the bettor with a receipt prior to the applicable drawing. The agreement states that the computer print out will "represent the tickets for bets placed."

The "ticket or share" requirement goes to the very heart and integrity of the lottery system. The physical ticket acts as a validating receipt, providing the player and the general public with assurance that all wagers are truly represented at the time of the drawing. This assurance is not provided by the artificial "ticket" as represented by the Lottery computer print out.

**FINDING: The State Lottery Director had no lawful authority to license a special sales agent who did not provide tickets to the public prior to official lottery drawings. The Lottery Commission made no attempt to address this oversight.**

The State Lottery Director's authority is limited by statute. Although the Director is empowered to unilaterally license lottery sales agents or appoint special sales agents, all agents must "sell lottery tickets."

The Lottery Director serves under the authority of the Lottery Commission. The Director is authorized to,

"supervise and administer the operation of the lottery in accordance with the provisions of the state lottery law, and rules and regulations made thereunder."<sup>33</sup>

The Lottery director does not have the authority to appoint a special sales agent who does not provide a ticket or share. According to Massachusetts General Law, the Director

"shall license as agents to sell Lottery tickets such persons as in his opinion best will best serve the public convenience and promote the sale of tickets or shares, provided, however, that no person shall be assigned more than one license to sell lottery tickets or shares."<sup>34</sup> (*emphasis added*)

Lottery-By-Phone does not provide a ticket or share as directed by Massachusetts General Law.

Interestingly, the Lottery Commission has never attempted to cure the Lottery Director's lack

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<sup>33</sup>M.G.L. Ch.10, Sec.26.

<sup>34</sup>M.G.L. Ch. 10, Sec. 26.





of authority by ratifying his actions through a formal vote. Perhaps the Commission's failure to ratify the Director's action lies in its recognition that it too lacks the authority to approve a scheme violating the statutory requirement to provide a physical ticket validating a player's wager.

**FINDING: Lottery-By-Phone violates Massachusetts General Law Chapter 271, Section 17(A), the prohibition against telephone wagering within the Commonwealth.**

The Massachusetts State Lottery and the Massachusetts State Lottery Commission do not have the authority to exempt the general public or National Interactive Systems, Inc. from the provisions of Massachusetts General Law barring telephone wagering. That authority is shared by the Governor and the state Legislature. The Massachusetts State Lottery and the State Lottery Commission did not have and still does not have the authority to unilaterally implement Lottery-By-Phone.

While the Lottery Commission has the statutory authority to "conduct" a state lottery and determine the "types of lottery" to be conducted and is exempted from prosecution "for setting up or promoting a lottery" and "for any other crime incidental thereto,"<sup>35</sup> it can not operate without prejudice to established law. For example, the State Lottery Commission cannot authorize the illegal sale of lottery tickets (e.g. to any person under the age of eighteen) or the sale of lottery tickets involving an illegal activity (e.g. animal fighting.)

**FINDING: The Massachusetts State Lottery Commission violated Massachusetts General Law Chapter 10, Section 24 by implementing Lottery-By-Phone without notifying the Governor and the state Legislature that the program would require a change in the laws of the Commonwealth.**

The Lottery's statute charges the Lottery Commission with reporting,

"immediately to the Governor and the General Court any matters which require immediate changes in the laws of the commonwealth in order to prevent abuses and evasions of the lottery law or rules and regulations..."<sup>36</sup>

The Lottery Commission was officially presented with the Lottery-By-Phone concept in March,

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<sup>35</sup>Ch. 10 Sec. 27.

<sup>36</sup>M.G.L. Ch. 10, Sec. 24.



1991. The Director's Report of the March Commission Meeting Minutes stated,

"in March, 1991, the Lottery will begin the pilot testing of a new telephone betting service involving AT&T 1-900 service."

The Director's Report stated that National Interactive Systems, Inc. had been licensed as a "Special Sales Agent" and briefly described Lottery-By-Phone.

The Commission met four more times during calendar year 1991, in: April, June, September, and November. According to Meeting Minutes, the "Launch of 1-900 telephone betting" was announced at the June, 1991 meeting.<sup>37</sup>

The Massachusetts State Lottery Commission allowed the implementation of telephone wagering without providing notice to the Governor and the General Court as mandated by Massachusetts General Law. A Lottery spokesman argued that notification was unnecessary as Lottery-By-Phone was simply a re-visitation of the 1976 - 1981 telephone sales game. The previous program, however, violated the telephone-wagering statute just as decidedly as Lottery-By-Phone violates the telephone-wagering statute. The Legislature *should* have addressed this issue in 1976. The fact that they did not, however, does not obviate the Lottery's current obligation to established law.

Lottery-By-Phone represents a serious departure from established Lottery procedure and violates at least two Massachusetts General Law statutes. As of this writing, the Lottery Commission has not promulgated regulations for or voted to authorize Lottery-By-Phone. As of this writing, the Lottery Commission has not informed the Governor or the General Court that Lottery-By-Phone requires "immediate changes in the laws of the commonwealth."

**FINDING: The Lottery's failure to place Lottery-By-Phone out to bid and its failure to assess the impact of Lottery-By-Phone on Lottery revenues represent serious violations of the public trust.**

**-- Failure To Place Lottery-By-Phone Out To Bid.**

The Massachusetts State Lottery follows the purchasing guidelines promulgated by the Massachusetts Department of Procurement and General Services. Those guidelines,

"assure that the purchase of services by departments of the Commonwealth are procured in a manner which ensure the value and quality of the service, ensure fair and

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<sup>37</sup>Director's Report, June 1991 Commission Meeting Minutes.



equitable treatment of all persons who offer services to the Commonwealth, and to increase the public confidence in the Commonwealth's procurement process."<sup>38</sup>

The Lottery Director is empowered to appoint "agents to sell lottery tickets such persons as in his opinion will best serve the public convenience and promote the sale of tickets or shares." Consequently, there is no requirement that Lottery ticket agents be selected by the public bidding process.

As we have demonstrated, Lottery-By-Phone does not provide a ticket. The selection of the Lottery-By-Phone agent is not, therefore, covered by the stated exemption from the public bidding process. In that event, the selection of agents such as National Interactive Systems, Inc. must be accomplished in accordance with the provisions outlined by the State Purchasing Agent's Division.

Prior to entering into an agreement with National Interactive Systems, Inc. the State Lottery did not file an industry "request for information" or "request for proposals." The Lottery's failure to solicit bids denied the "special sales agent" opportunity to other interactive telecommunications businesses in the Commonwealth.

According to testimony submitted by National Interactive Systems, Inc., Lottery-By-Phone could provide "in excess of \$1 million per month to the Commonwealth Treasury."<sup>39</sup> The Commonwealth receives thirty percent of each Lottery sale.<sup>40</sup> Therefore, National Interactive Systems, Inc. projected \$3 million in sales per month. *Based upon this testimony, Lottery-By-Phone was projected to provide National Interactive Systems, Inc. with \$1.5 million per month in commission monies, bonus payments, and service fees.*

Records reviewed for this study indicate that eight telecommunications service bureaus were

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<sup>38</sup>802 CMR: Department of Procurement and General Services 2.01: Application and Purpose.

<sup>39</sup>Motion for Expedited Proceeding and for Summary Judgement, signed by National Interactive Systems/CommNetics, Inc., and AT&T, June 19, 1991, p. 3.

<sup>40</sup>Sixty percent of each sale goes to prize money, the remaining ten percent pays for operating expenses and advertising.







operating in Massachusetts during 1990-1991.<sup>41</sup> Although it is now impossible to verify that all eight bureaus were capable of handling Lottery-By-Phone, records indicate that National Interactive Systems, Inc./CommNetics, Inc. did not have a proprietary claim on Lottery-By-Phone technology.

The office of Treasurer Joseph D. Malone received a letter on July 29, 1991 from TelAmerica Productions of Chicago, Illinois stating,

"We have confirmed ... that National Interactive Systems, Inc. is planning to license a means to purchase lottery tickets by telephone in Massachusetts in the near future.

"Please be aware that TelAmerica Productions, Inc. was awarded a patent specifically for these types of transactions."

A spokesman for National Interactive Systems, Inc. claimed that his company had filed for a Lottery-By-Phone patent.<sup>42</sup> Neither TelAmerica Productions or National Interactive Systems, Inc. has provided this Committee with patent documentation. However, the TelAmerica Productions letter shows that the Lottery-By-Phone technology is not necessarily unique to National Interactive Systems, Inc./CommNetics, Inc.

The Lottery-By-Phone vendor selection process would have been better served had the Massachusetts State Lottery Commission solicited bids to ensure that: 1) the best service bureau in the Commonwealth was conducting the pilot program; 2) all service bureaus had received equal and fair treatment at the hands of the Lottery; and 3) that the process was open and free of any appearance of impropriety.

#### **-- Failure To Assess Impact Of Lottery-By-Phone On Lottery Revenue**

The Massachusetts States Lottery Commission was created by an emergency act in 1971 to provide "state assistance to cities and towns." The Lottery has since become a national leader generating over \$1.5 billion a year in gross sales.

Lottery revenues make up approximately thirteen percent of all local aid payments. A Lottery revenue decline would translate into an operating revenue decrease for the cities and towns of the Commonwealth.

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<sup>41</sup>InfoText Magazine, "1991 Service Bureau Review", August 1991, p. 44-74.

<sup>42</sup>Letter to Massachusetts State Lottery, dated April 6, 1990.



In the past, the Massachusetts State Lottery has used extensive market research to gauge public opinion of game image, player behavior, and the player and non-player opinion of lottery games, format, and proposed modifications.<sup>43</sup> This research has allowed the Lottery to avoid implementing policy changes that may undercut Lottery sales, and, subsequently, Lottery revenue.

Conceptually, Lottery-By-Phone represented a major departure from established Lottery procedure and policy. For the first time, credit would be extended to Lottery players and a service fee would be charged for every wager made. For the first time a state lottery would interact with the 900 number service industry, an industry widely associated with adult telephone sex lines and boiler-room sweep-stakes operations.

The Massachusetts State Lottery did not conduct any independent market research on the prospective effects of Lottery-By-Phone on the existing lottery portfolio.

In December 1990, National Interactive Systems, Inc. initiated market research in six states for Lottery-By-Phone.<sup>44</sup> The Lottery did not fund or participate in the formulation of the study.

The Committee received raw survey data for two of the states polled, Massachusetts and Maryland. The results are overwhelmingly negative. Eighty-six percent of Massachusetts lottery players said that they would not play the lottery over the telephone, as did eighty-one percent of the Maryland lottery players polled.

The survey did not, however, poll the public image of the 900 number industry, or attempt to gauge the effect the "900 number" image would have on a partnership between the industry and an established state lottery.

The Massachusetts State Lottery has an obligation to protect the revenue it generates for the cities and towns of the Commonwealth. A market survey generated by the proponent of Lottery-By-Phone did not relieve the State Lottery of the responsibility to independently gauge the program's impact on the Lottery's image, operation, and effectiveness.

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<sup>43</sup>Quantitative Research Findings: The Massachusetts State Lottery Games, HHCC Marketing Research and Planning, March 1986.

<sup>44</sup>Joint Committee on Government Regulations hearing, December 16, 1991.



**FINDING: The Massachusetts State Lottery Commission has held no public hearings or provided any public notice concerning Lottery-By-Phone thereby denying the public a voice in the decision-making process.**

The Massachusetts State Lottery Commission should have held a public meeting providing interested parties the opportunity to present data, views, or arguments in favor or against Lottery-By-Phone, approving the National Interactive Systems, Inc. special sales agent licensing agreement, and formally adopting Lottery-By-Phone.

The public meeting or notice would have allowed the Lottery to gauge public opinion of the program. This forum would have also served to render moot justifiable criticism that the Lottery employed a "closed-door policy" in its decision-making process.

Lottery-By-Phone represents a potential threat to the overall sales of each of the 5,600 on-line agents in the state. According to a study conducted for the Lottery, most lottery tickets are sold in convenience stores.<sup>45</sup> A public hearing would have allowed input from the on-line lottery agents. The Lottery's indifference to the opinions of the small business sales agents was unwarranted and unfair.

The public hearing could have been used to define and explain the purpose and scope of the pilot program. For example:

- What will happen when the pilot program expires?
- Will the Lottery file a Lottery-By-Phone Request-For-Proposals?
- Can the Lottery-By-Phone special sales agreement be extended without a bid?
- Will on-line sales agents be extended the same benefits that Lottery-By-Phone is getting?
- If the program is prematurely terminated will National Interactive Systems, Inc. have any claim against the Commonwealth?
- What is the Lottery-By-Phone audit trail and how will this trail "prove" ownership of a telephone wager, barring a physical ticket?
- What other telecommunications experts were consulted by the Lottery before the Lottery-By-Phone agreement was signed?

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<sup>45</sup>HHCC Marketing Research and Planning, op cit.





- How many Massachusetts Service Bureaus within the Commonwealth are capable of operating Lottery-By-Phone?
- Must Lottery-By-Phone be contained within one service bureau or can the opportunity be shared throughout the industry?
- Will on-line agents be extended twenty-four hour per day sales access?
- Will on-line agents be allowed to charge a service fee for lottery expenses?
- How will Lottery-By-Phone comply with Chapter 138 of the Acts of 1991 mandating that Massachusetts Council on Compulsive Gambling notices be posted at each point of lottery sale?
- How will persons under age eighteen be prevented from playing the Lottery-By-Phone?

While addressing the Joint Committee for Government Regulations a spokesman for National Interactive Systems, Inc. said that the success and acceptance of Lottery-By-Phone should be determined "by the people of Massachusetts."<sup>46</sup> Ironically, those very people were denied a voice, either directly or through their elected officials, in the formulation of the very program they are now asked to accept.

**FINDING: The Massachusetts State Lottery Commission should undertake a study to ascertain, and then inform the Governor and the General Court, which legislation it believes has been rendered obsolete due to advances in technology or public policy goals. The Governor and the General Court should then work to address these issues.**

This report focuses on the process by which the Massachusetts State Lottery came to offer Lottery-By-Phone to the general public. It does not attempt to validate or invalidate Lottery-By-Phone as a concept. That validation would come from the Massachusetts State Lottery Commission and the Joint Committee on Government Regulations.

This report has shown, however, that under its present statutory authority, the Massachusetts State Lottery Commission cannot legally offer Lottery-By-Phone without amendments to Massachusetts General Law.

The Massachusetts State Lottery Commission was created twenty years ago. Since that time,

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<sup>46</sup>Statement of National Interactive Systems, Inc./CommNetics, Inc. Senior Vice-President, Hearing of Joint Committee on Government Regulations, December 16, 1991, p. 11.



technological advances have outpaced legislative review. To avoid future conflicts between technology, policy, and the law, the Massachusetts State Lottery Commission should review its operating statute and identify provisions that it believes must be amended, expanded, or repealed. The Commission should then so notify the General Court and the Governor.

### **RECOMMENDATION**

#### **RECOMMENDATION: The Massachusetts State Lottery Commission should shut down Lottery-By-Phone.**

The unauthorized licensing agreement between the State Lottery and National Interactive Systems, Inc. states that the agreement shall be terminated if the method of play is found to be illegal.

Lottery-By-Phone is in current violation of Massachusetts General Law. The Massachusetts State Lottery Commission should notify National Interactive Systems, Inc. that its status as a special sales agent is inoperative and has been revoked. The Massachusetts State Lottery Commission should shut down Lottery-By-Phone.



#### PART IV: CONCLUSION

This report deals directly with the Massachusetts State Lottery Commission, the Massachusetts Department of Public Utilities, and their involvement in Lottery-By-Phone. The report indirectly, however, examines a pitfall of privatization.

The public "process" exists to protect the public interest. In the current administration's rush to divest government of its "bureaucracy" policy makers must not divest state government of its responsibility and accountability to the people of the Commonwealth.

The discovery of a new method of collecting back taxes, filling pot-holes, providing human services, or raising lottery revenue, does not give license to a public agency to sidestep the safeguards that preserve the public trust. In many instances, an agency's public image is almost as important as its budget allocation. A private entity which has lost the public trust can use market forces to re-gain its former stature. A public entity that has lost the public trust may lose its ability to function.

